

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

BARBIE SPEAR et al., Plaintiffs, v. DAVID B. FENKELL et al., Defendants.	Case No. 2:13-cv-02391-RAL
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**DECLARATION OF CHARLES C. JACKSON IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

I am a Senior Counsel with the law firm of Morgan, Lewis & Bockius LLP, counsel for plaintiffs Alliance Holdings, Inc. ("Alliance") and individually-named Counterclaim and Cross-Claim defendants, and I submit this Declaration in support of the Motions for Summary Judgment filed by Alliance and Barbie Spear, solely in her capacity as trustee of the Alliance Holdings, Inc. Employee Stock Ownership Plan (together, "plaintiffs"), and by the Counterclaim and Cross-Claim individual defendants.. This Declaration is based upon my personal knowledge.

1. A true and correct copy of the Deposition of Ronald Brooks taken on January 28, 2015 is attached hereto as Exhibit 1.

- Brooks Deposition Exhibit 212 (*Filed Under Seal*)
- Brooks Deposition Exhibit 216 (*Filed Under Seal*)

2. A true and correct copy of the Deposition of Thomas Chema taken on November 18, 2015 is attached hereto as Exhibit 2.

3. A true and correct copy of the Deposition of Carl Draucker taken on September 11, 2014 is attached hereto as Exhibit 3.

- Draucker Deposition Exhibit 3
- Draucker Deposition Exhibit 5
- Draucker Deposition Exhibit 8 (*Filed Under Seal*)
- Draucker Deposition Exhibit 11 (*Filed Under Seal*)
- Draucker Deposition Exhibit 14 (*Filed Under Seal*)
- Draucker Deposition Exhibit 17

4. A true and correct copy of the Deposition of Carl Draucker taken on January 8, 2015 is attached hereto as Exhibit 4.

5. A true and correct copy of the Deposition of Carl Draucker taken on April 14, 2015 is attached hereto as Exhibit 5.

- Draucker Deposition Exhibit 514 (*Filed Under Seal*)
- Draucker Deposition Exhibit 516 (*Filed Under Seal*)
- Draucker Deposition Exhibit 529 (*Filed Under Seal*)
- Draucker Deposition Exhibit 531 (*Filed Under Seal*)
- Draucker Deposition Exhibit 537 (*Filed Under Seal*)

6. A true and correct copy of the Deposition of Michael Endres taken on April 28, 2015 is attached hereto as Exhibit 6.

7. A true and correct copy of the Deposition of David Fenkell taken on April 7, 2011 is attached hereto as Exhibit 7.

8. A true and correct copy of the Deposition of David Fenkell taken on July 8, 2014 is attached hereto as Exhibit 8.

- Fenkell Deposition Exhibit 43
- Fenkell Deposition Exhibit 44
- Fenkell Deposition Exhibit 45

- Fenkell Deposition Exhibit 46
- Fenkell Deposition Exhibit 47
- Fenkell Deposition Exhibit 48
- Fenkell Deposition Exhibit 49
- Fenkell Deposition Exhibit 50
- Fenkell Deposition Exhibit 51
- Fenkell Deposition Exhibit 53
- Fenkell Deposition Exhibit 55

9. A true and correct copy of the Deposition of David Fenkell taken on July 11, 2014 is attached hereto as Exhibit 9.

- Fenkell Deposition Exhibit 14
- Fenkell Deposition Exhibit 15
- Fenkell Deposition Exhibit 17
- Fenkell Deposition Exhibit 19
- Fenkell Deposition Exhibit 20
- Fenkell Deposition Exhibit 21

10. A true and correct copy of the Deposition of David Fenkell dated on January 27, 2015 is attached hereto as Exhibit 10.

- Fenkell Deposition Exhibit 31
- Fenkell Deposition Exhibit 34

11. A true and correct copy of the (Confidential) Deposition of David Fenkell taken on March 25, 2015 in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 11. (***Filed Under Seal***)

12. A true and correct copy of the Deposition of Karen Fenkell taken on July 29, 2015 in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al*, is attached hereto as Exhibit 12.

- K. Fenkell Deposition Exhibit 7
- K. Fenkell Deposition Exhibit 8
- K. Fenkell Deposition Exhibit 9
- K. Fenkell Deposition Exhibit 10
- K. Fenkell Deposition Exhibit 11
- K. Fenkell Deposition Exhibit 12
- K. Fenkell Deposition Exhibit 13
- K. Fenkell Deposition Exhibit 14
- K. Fenkell Deposition Exhibit 15

13. A true and correct copy of the Deposition of Karen Fenkell taken on April 23, 2015 is attached hereto as Exhibit 13.

- K. Fenkell Deposition Exhibit 129
- K. Fenkell Deposition Exhibit 130
- K. Fenkell Deposition Exhibit 147

14. A true and correct copy of the (Confidential) Deposition of Barry Gowdy taken on March 31, 2015 is attached hereto as Exhibit 14. (*Filed Under Seal*)

- Gowdy Deposition Exhibit 424. (*Filed Under Seal*)

15. A true and correct copy of the Deposition of Robert Grien taken on September 29, 2015 is attached hereto as Exhibit 15.

- Halpern Deposition Exhibit 809

16. A true and correct copy of the Deposition of James Henson taken on April 27, 2015 is attached hereto as Exhibit 16.

17. A true and correct copy of the Deposition of Eliot Hermanson taken on May 21, 2015 is attached hereto as Exhibit 17.

- Hermanson Deposition Exhibit 6
- Hermanson Deposition Exhibit 17

18. A true and correct copy of the (Confidential) Deposition of Joseph Hiltwine taken on December 9, 2014 is attached hereto as Exhibit 18. (***Filed Under Seal***)

19. A true and correct copy of the Deposition of Donald Hughes taken on September 12, 2014 is attached hereto as Exhibit 19.

20. A true and correct copy of the Deposition of Stephen Jones taken on November 19, 2014 is attached hereto as Exhibit 20.

- Jones Deposition Exhibit 2
- Jones Deposition Exhibit 3
- Jones Deposition Exhibit 4
- Jones Deposition Exhibit 6
- Jones Deposition Exhibit 13

21. A true and correct copy of the (Confidential) Deposition of John Kolla taken on January 15, 2015 is attached hereto as Exhibit 21. (***Filed Under Seal***)

- Kolla Deposition Exhibit 149 (***Filed Under Seal***)

22. A true and correct copy of the Deposition of Eric Lynn taken on May 15, 2011 in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 22.

23. A true and correct copy of the (Confidential) Deposition of Eric Lynn taken on February 9, 2015 is attached hereto as Exhibit 23. (***Filed Under Seal***)

- Lynn Deposition Exhibit 250 (***Filed Under Seal***)

24. A true and correct copy of the Deposition of Robert Massengill taken on April 8, 2015 is attached hereto as Exhibit 24.

- Massengill Deposition Exhibit 444
- Massengill Deposition Exhibit 448

25. A true and correct copy of the (Confidential) Deposition of James Mastrangelo taken on April 1, 2010 in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.* is attached hereto as Exhibit 25. (***Filed Under Seal***)

26. A true and correct copy of the Deposition of James Mastrangelo taken on January 22, 2015 is attached hereto as Exhibit 26.

27. A true and correct copy of the Deposition of David Meuse taken on April 28, 2015 is attached hereto as Exhibit 27.

28. A true and correct copy of the Deposition of Patrick O'Cull taken on Marcy 10, 2015 is attached hereto as Exhibit 28.

29. A true and correct copy of the Deposition of James Pickett taken on April 29, 2015 is attached hereto as Exhibit 29.

- Pickett Deposition Exhibit 750

30. A true and correct copy of the Deposition of Bradley Pospichel taken on April 27, 2015 is attached hereto as Exhibit 30.

- Pospichel Deposition Exhibit 734

31. A true and correct copy of the Deposition of Leo Pound taken on April 21, 2015 is attached hereto as Exhibit 31.

- Pound Deposition Exhibit 637 (***Filed Under Seal***)

32. A true and correct copy of the (Confidential) Deposition of Lianne Sefcovic taken on July 3, 2014 is attached hereto as Exhibit 32. (***Filed Under Seal***)

- L. Sefcovic Deposition Exhibit 33 (*Filed Under Seal*)
- L. Sefcovic Deposition Exhibit 37 (*Filed Under Seal*)
- L. Sefcovic Deposition Exhibit 40 (*Filed Under Seal*)
- L. Sefcovic Deposition Exhibit 41 (*Filed Under Seal*)

33. A true and correct copy of the (Confidential) Deposition of Paul Sefcovic taken on July 2, 2014 is attached hereto as Exhibit 33. (*Filed Under Seal*)

- P. Sefcovic Deposition Exhibit 4 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 6 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 10 (*Filed Under Seal*)
- P. Secfovic Deposition Exhibit 11 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 19 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 23 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 24 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 25 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 27 (*Filed Under Seal*)
- P. Sefcovic Deposition Exhibit 30 (*Filed Under Seal*)

34. A true and correct copy of the Deposition of Paul Sheldon taken on October 28, 2014 is attached hereto as Exhibit 34.

- Sheldon Deposition Exhibit 2
- Sheldon Deposition Exhibit 3 (*Filed Under Seal*)
- Sheldon Deposition Exhibit 4
- Sheldon Deposition Exhibit 5
- Sheldon Deposition Exhibit 6
- Sheldon Deposition Exhibit 8
- Sheldon Deposition Exhibit 9

- Sheldon Deposition Exhibit 11
- Sheldon Deposition Exhibit 14
- Sheldon Deposition Exhibit 15
- Sheldon Deposition Exhibit 16

35. A true and correct copy of the Deposition of Barbie Spear taken on January 6, 2015 is attached hereto as Exhibit 35.

- Spear Deposition Exhibit 13 (*Filed Under Seal*)

36. A true and correct copy of the Deposition of Barbie Spear taken on February 3, 2015 is attached hereto as Exhibit 36.

- Spear Deposition Exhibit 21 (*Filed Under Seal*)
- Spear Deposition Exhibit 26 (*Filed Under Seal*)
- Spear Deposition Exhibit 51 (*Filed Under Seal*)
- Spear Deposition Exhibit 57

37. A true and correct copy of the (Confidential) Deposition of Barbie Spear taken on February 25, 2015 is attached hereto as Exhibit 37. (*Filed Under Seal*)

- Spear Deposition Exhibit 272 (*Filed Under Seal*)
- Spear Deposition Exhibit 273 (*Filed Under Seal*)
- Spear Deposition Exhibit 276 (*Filed Under Seal*)
- Spear Deposition Exhibit 281 (*Filed Under Seal*)
- Spear Deposition Exhibit 284 (*Filed Under Seal*)
- Spear Deposition Exhibit 314 (*Filed Under Seal*)

38. A true and correct copy of the Deposition of Barbie Spear taken on April 15, 2015 is attached hereto as Exhibit 38.

- Spear Deposition Exhibit 578

- Spear Deposition Exhibit 583
- Spear Deposition Exhibit 587
- Spear Deposition Exhibit 591
- Spear Deposition Exhibit 592
- Spear Deposition Exhibit 593
- Spear Deposition Exhibit 594 (*Filed Under Seal*)

39. A true and correct copy of the Deposition of Barbie Spear taken on April 16, 2015 is attached hereto as Exhibit 39.

- Spear Deposition Exhibit 608

40. A true and correct copy of the Deposition of Susan Valitsky taken on November 18, 2014 is attached hereto as Exhibit 40.

- Valitsky Deposition Exhibit 1 (*Filed Under Seal*)
- Valitsky Deposition Exhibit 6 (*Filed Under Seal*)

41. A true and correct copy of the Deposition of William Vogelgesang taken on September 3, 2014 is attached hereto as Exhibit 41.

- Vogelgesang Deposition Exhibit 3 (*Filed Under Seal*)
- Vogelgesang Deposition Exhibit 4 (*Filed Under Seal*)

42. A true and correct copy of the Deposition of William Vogelgesang taken on January 16, 2015 is attached hereto as Exhibit 42.

- Vogelgesang Deposition Exhibit 187
- Vogelgesang Deposition Exhibit 193 (*Filed Under Seal*)

43. A true and correct copy of the Deposition of Kenneth Wanko taken on September 5, 2014 is attached hereto as Exhibit 43.

44. A true and correct copy of the Deposition of Kenneth Wanko taken on January 5, 2015 is attached hereto as Exhibit 44.

45. A true and correct copy of the (Confidential) Deposition of Kenneth Wanko taken on February 5, 2015 is attached hereto as Exhibit 45. (*Filed Under Seal*)

- Wanko Deposition Exhibit 223 (*Filed Under Seal*)
- Wanko Deposition Exhibit 229 (*Filed Under Seal*)
- Wanko Deposition Exhibit 232 (*Filed Under Seal*)

46. A true and correct copy of the Deposition of Kenneth Wanko taken on April 16, 2015 is attached hereto as Exhibit 46.

- Wanko Deposition Exhibit 617 (*Filed Under Seal*)
- Wanko Deposition Exhibit 618 (*Filed Under Seal*)
- Wanko Deposition Exhibit 619 (*Filed Under Seal*)
- Wanko Deposition Exhibit 620

47. A true and correct copy of the Deposition of John Witten taken on December 18, 2014 is attached hereto as Exhibit 47.

- Witten Deposition Exhibit 76
- Witten Deposition Exhibit 77
- Witten Deposition Exhibit 78 (*Filed Under Seal*)
- Witten Deposition Exhibit 80 (*Filed Under Seal*)
- Witten Deposition Exhibit 81 (*Filed Under Seal*)
- Witten Deposition Exhibit 88 (*Filed Under Seal*)
- Witten Deposition Exhibit 89 (*Filed Under Seal*)
- Witten Deposition Exhibit 90 (*Filed Under Seal*)
- Witten Deposition Exhibit 91 (*Filed Under Seal*)

48. A true and correct copy of the Deposition of John Witten taken on January 26, 2015 is attached hereto as Exhibit 48.

- Witten Deposition Exhibit 195
- Witten Deposition Exhibit 196 (*Filed Under Seal*)
- Witten Deposition Exhibit 197
- Witten Deposition Exhibit 198 (*Filed Under Seal*)
- Witten Deposition Exhibit 202 (*Filed Under Seal*)
- Witten Deposition Exhibit 203 (*Filed Under Seal*)
- Witten Deposition Exhibit 204 (*Filed Under Seal*)
- Witten Deposition Exhibit 207 (*Filed Under Seal*)
- Witten Deposition Exhibit 208 (*Filed Under Seal*)

49. A true and correct copy of the June 21, 2010 email re Alliance Tuesday 10AM Student Loan Call (AH_EDPA_00032743) is attached hereto as Exhibit 49.

50. A true and correct copy of the November 30, 2008 email re Mercer (AH_EDPA_00043538) is attached hereto as Exhibit 50.

51. A true and correct copy of the January 7, 2005 Memorandum re Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust – Acquisition of S Corporation (AH_EDPA_00088729) is attached hereto as Exhibit 51.

52. A true and correct copy of the Alliance Holdings, Inc./Banc One Capital Corporation Issues To Be Discussed Memo (AH_EDPA_01185745) is attached hereto as Exhibit 52.

53. A true and correct copy of the February 12, 2007 memo regarding complexities for potential sale to Trachte employees (AH_EDPA_01250234) is attached hereto as Exhibit 53.

54. A true and correct copy of the December 1, 1995 Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust Summary Plan Description (AH_EDPA_001442900) is attached hereto as Exhibit 54.

55. A true and correct copy of the December 2, 2015 Alliance Holdings, Inc. Presentation to The Board of Directors and Shareholders of Overton Gear & Tool Corporation (AH_EDPA_001443075) is attached hereto as Exhibit 55.

56. A true and correct copy of the November 15, 2000 Action of Sole Director (AH_EDPA_001444531) is attached hereto as Exhibit 56.

57. A true and correct copy of the Morgan Stanley Retirement Account Statement for month ending December 31, 2007 (AH_EDPA_001453309) is attached hereto as Exhibit 57.

(Filed Under Seal)

58. A true and correct copy of the Morgan Stanley Active Assets Account Statement for month ending January 31, 2009 (AH_EDPA_001454379) is attached hereto as Exhibit 58.

(Filed Under Seal)

59. A true and correct copy of the Morgan Stanley Active Assets Account Statement for month ending February 28, 2009 (AH_EDPA_001454415) is attached hereto as Exhibit 59.

(Filed Under Seal)

60. A true and correct copy of the Morgan Stanley Active Assets Account Statement for the period January 1-31, 2010 (AH_EDPA_001454781) is attached hereto as Exhibit 60.

(Filed Under Seal)

61. A true and correct copy of the Morgan Stanley Active Assets Account Statement for the period February 1-28, 2010 (AH_EDPA_001454805) is attached hereto as Exhibit 61.

(Filed Under Seal)

62. A true and correct copy of the Morgan Stanley Active Assets Account Statement for the period January 1-31, 2011 (AH_EDPA_001455125) is attached hereto as Exhibit 62.

(Filed Under Seal)

63. A true and correct copy of the Morgan Stanley Active Assets Account Statement for the period February 1-28, 2011 (AH_EDPA_001455149) is attached hereto as Exhibit 63.

(Filed Under Seal)

64. A true and correct copy of the Incoming Wire Transfer Detail (AH_EDPA_001470691) is attached hereto as Exhibit 64. ***(Filed Under Seal)***

65. A true and correct copy of an expense report from November 2005 (AH_EDPA_01494473) is attached hereto as Exhibit 65.

66. A true and correct copy of the Student Loan Advisory Management Services LLC Articles of Organization For A Domestic Limited Liability Company (Sefcovic 00018-24) is attached hereto as Exhibit 66. ***(Filed Under Seal)***

67. A true and correct copy of the Advisory Services Agreement between Alliance Holdings, Inc. and Student Loan Management and Research Services LLC (Sefcovic 00084-89) is attached hereto as Exhibit 67. ***(Filed Under Seal)***

68. A true and correct copy of the Organization Chart (SP0023686) is attached hereto as Exhibit 68. ***(Filed Under Seal)***

69. A true and correct copy of the June 22, 2015 Expert Report of Ricardo Zayas is attached hereto as Exhibit 69.

70. A true and correct copy of the June 4, 2015 Expert Report of Gregory K. Brown in the matter of *Fenkell v. Spear*, Philadelphia Court of Common Please (No. 13034317) is attached hereto as Exhibit 70.

71. A true and correct copy of the June 4, 2015 Supplemental Expert Report of Ricardo J. Zayas in the matter of *Fenkell v. Spear*, Philadelphia Court of Common Pleas (No. 13034317) is attached hereto as Exhibit 71.

72. A true and correct copy of the November 14, 2004 Stock Purchase Agreement is attached hereto as Exhibit 72.

73. A true and correct copy of the June 10, 2014 Alliance's Responses and Objections to Fenkell's First Set of Interrogatories is attached hereto as Exhibit 73.

74. A true and correct copy of the 2004 Fenkell Income Tax Returns is attached hereto as Exhibit 74. (***Filed Under Seal***)

75. A true and correct copy of the ESOP Transaction - Bank One Corporation (Sept. 1999 - Aug. 2011) Summary is attached hereto as Exhibit 75. (***Filed Under Seal***)

76. A true and correct copy of October 2, 2006 email from S. Gould to B. Spear regarding valuation mark-up (Gould Dep. Ex. 908) is attached hereto as Exhibit 76.

77. A true and correct copy of the April 10, 2015 Stonehenge Privilege Log is attached hereto as Exhibit 77.

78. A true and correct copy of the October 6, 2011 Summary Judgment Argument transfer in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 78.

79. A true and correct copy of the October 12, 2011 Trial Transcript (Vol 2-B) in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 79.

80. A true and correct copy of the March 28, 2012 Order at Docket 677 in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 80.

81. A true and correct copy of the April 13, 2012 Telephonic Status Conference Transcript in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 81.

82. A true and correct copy of the September 10, 2015 Contempt Hearing Transcript in the matter of *Chesemore et al. v. Alliance Holdings, Inc. et al.*, is attached hereto as Exhibit 82.

83. A true and correct copy of an excerpt of the 2007 ESOP DOL Audit Materials (AH_EDPA_01408203) is attached hereto as Exhibit 83.

84. A true and correct copy of the November 6, 2015 Declaration of Matthew J. Sharbaugh is attached hereto as Exhibit 84.

85. A true and correct copy of the November 6, 2015 Declaration of Barbie Spear is attached hereto as Exhibit 85.

86. A true and correct copy of the Summary Chart Docket Entries 168, 214, 445-2, and 445-6 is attached hereto as Exhibit 86.

87. A true and correct copy of the Meeting Minutes of the Compensation Committee of Alliance Holding, Inc. (AH_EDPA_0002869) is attached hereto as Exhibit 87.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct to the best of my knowledge.

Dated: November 6, 2015

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Charles C. Jackson
Charles C. Jackson